IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4333 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PORBANDAR NAGRPALIKA - Petitioner(s)
Versus
APPELLATE OFFICER & 2 - Respondent(s)

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Appearance :

MRS. SANGEETA PAHWA for Petitioner(s) : 1,
MS.MANISHA LAVKUMAR, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
None for Respondent(s) : 3,
None for Respondent(s) : 3.2.1

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/07/2007

ORAL JUDGMENT

Mrs. Sangeeta Pahwa, learned counsel for the

petitioner; Ms. Manisha Lavkumar, learned AGP for the respondents no. 1 and 2; none for the respondent no.3 though served.

2. The petitioner, being aggrieved by the order passed by the appellate authority under the provisions of the Payment of Gratuity Act, is before this Court with a submission that the order for payment of gratuity could not be made in favour of the workman even when he was in service.

3. It is not in dispute before me that the workman had come from the State services to the Municipality; he was removed from the services; ultimately, he succeeded in the Civil Suit, decree granted in favour of the workman directed reinstatement with full back wages with continuity of service and, all consequential benefits. It appears thereafter, the workman was repatriated and made an application for payment of gratuity. The only objection raised by the present petitioner was that gratuity was payable at the time of retirement and as the workman continued to work, such order could not be made.

4. As on today, nobody knows that the workman continues to be in service or not. If he has already retired, then, his entitlement to get gratuity amount would stand strengthened by the fact of his retirement and the petitioner cannot avoid liability of making payment. In case, gratuity has already been paid to the workman from the coffers of the State Government, then, the petitioner would be obliged to pay the amount of gratuity to the State Government for the period for which the workman had worked with the present petitioner.

5. If the workman continues to work even today, then too, the Municipality cannot deny its liability to make payment of money or transfer of the money to the State Government. In either of the eventualities, the liability would continue. I find no reason to interfere. The petition is dismissed. Rule is discharged accordingly. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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